

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MOBIUS MANAGEMENT SYSTEMS, INC.,

Plaintiff,

- against -

ACARTUS, INC. and EMC CORPORATION,

Defendants.

C.A. No. 05-346 SLR

Declaration of Mitchell Gross

I, Mitchell Gross, hereby declare:

1. I am the President of Mobius Management Systems, Inc. ("Mobius"), plaintiff in this action. I submit this declaration in opposition to defendants' motion for summary judgment.

2. Because of the protective order entered in this case, I have not been permitted to review many of the documents concerning the alleged misappropriation of Mobius trade secrets with respect to (i) the Mobius "DAF" format and related materials, and (ii) market strategy documents improperly taken and used by [REDACTED] a former Mobius sales executive. Accordingly, below I confine myself to providing background and facts concerning Mobius, Mobius' ViewDirect software system and the trade secret nature of the materials at issue in this case. I also explain (i) the actions Mobius took when the company found out that a low level DAF had been posted on the internet, and (ii) why certain promotional statements made by defendant Acartus concerning Mobius are false. I understand that the balance of the facts and issues relevant to defendants' motion are addressed in Mobius' memorandum in opposition to defendants' motion for summary judgment.

Mobius' ViewDirect Software System

3. Mobius develops, licenses and supports software systems designed to optimize the storage, retrieval, presentation, delivery and disposition of electronically-stored information such as records, documents, images, print datastreams, computer reports, transactions, video, audio and data in any electronic format. I was one of the founders of Mobius more than 25 years ago. Since that time,

Mobius has grown to become one of the leaders in its field, although we are still small compared to defendant EMC.

4. Mobius' principal software system is called ViewDirect. This system allows licensees to capture, index, store and display a wide variety of physical and electronically-stored information such as those described above. ViewDirect is the culmination of the efforts of many dedicated Mobius software engineers. In addition, Mobius invested millions of dollars in research and development over many years to bring the ViewDirect system to market and to keep the product competitive. Mobius licenses ViewDirect to customers in a wide range of industries, including banking, telecommunication, retail, utilities, financial, healthcare, government, insurance, manufacturing and transportation. Mobius has also invested substantially in its marketing effort for ViewDirect, and has worked hard to cultivate a loyal and satisfied customer base.

5. Mobius' ViewDirect system compresses, consolidates and stores customer data in what are called "DAFs" or document archive files, a non-published and proprietary container for archived electronically-stored information. DAF containers are an essential, integral and inseparable part of the ViewDirect system. The container format is essential to the system's design, and the ViewDirect system cannot function without these containers.

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10. One of Mobius' most valuable assets is its intellectual property. Like any sophisticated software company, Mobius goes to great lengths to protect its trade secrets and other proprietary information, including maintaining the material in a safe and secure place, restricting access,

labeling the software itself as a trade secret, and prohibiting both present and former Mobius employees and licensees from reproducing or disclosing such information without Mobius' authorization or consent.

11. All customers who use Mobius' ViewDirect archival software must enter into a license agreement, the terms of which are described in Mobius' memorandum in opposition to defendants' summary judgment motion. The license agreement (i) makes clear that the software, documentation, data, and other material supplied by Mobius are proprietary to Mobius and a Mobius trade secret, (ii) requires that such materials be maintained in a safe and secure place, and (iii) prohibits the licensee from reproducing such materials or disclosing them to others, or reverse engineering any aspect of the software. The terms of Mobius license agreements are fairly standard in our field.

12. As written, the license agreement was intended to and does prohibit any and all forms of reverse engineering, including what is called black box reverse engineering. In addition, the trade secret, confidentiality and reverse engineering provisions of the Mobius license agreement were intended to and we believe do in fact encompass the DAF container format and related materials.

13. In 1999, Mobius filed with the Internet Assigned Numbers Authority ("IANA"), the organization responsible for assigning internet protocol addresses, a registration for ".DAF." The filing required Mobius to explain the purpose of the DAF file format and disclose to the public information concerning the specifications for DAFs. Mobius stated in its filing as follows: "Published specifications: None. The specifications for this content type are proprietary to Mobius Management System, Inc." (Perkins Exh. 6). By this filing, Mobius informed the public that the DAF specifications were not of an open-source nature but rather were a Mobius trade secret.

14. I understand that defendants claim Mobius lost any trade secrets rights to the DAF format when, unbeknownst to Mobius, a third party posted a DAF on the internet. As described in Mobius' memorandum in opposition to defendants' motion for summary judgment, Mobius and its counsel acted promptly to obtain the immediate removal of that posting as soon as Mobius learned of the improper posting. After the DAF was removed from the internet, Mobius believed it had contained the problem, and Mobius believes it acted reasonably in addressing this issue.

15. This is particularly the case because the specific DAF posted was a low level DAF of limited sophistication. This DAF was likely dissimilar to the DAFs that Acartus obtained directly from Mobius licensees.

16. I understand that defendants assert Mobius does not label the DAF format as proprietary, as is supposedly Mobius' practice with respect to its trade secrets. In fact, the Mobius software is labeled as confidential and proprietary to Mobius, and the DAF containers are integral to and inseparable from the ViewDirect software and its components. Against this backdrop, the Mobius license agreement, coupled with the IANA filing, provide ample notice concerning the trade secret status of the Mobius materials.

17. Apart from the events at issue in the case, Mobius is unaware of any licensee who provided DAFs to a third party to develop a competing software product. Nor is Mobius aware, apart from this case, of any third party who reverse engineered the DAF container format.

Market strategy documents

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Acartus' false advertising

20. Acartus made several false and misleading statements in the promotional data sheet for its "Mobius DAF Export Utility," posted on the internet. Among these were Acartus' claim that:

Due to proprietary storage models such as Mobius' DAF format, continued access of this content has posed some difficult decisions for enterprises. Companies have had to either perform a manual transformation of content, or continue to support their deep archive storage. Manually transforming legacy content, whether performed internally or outsourced to a services group, poses a tremendous cost of time and resources.

21. There statements are false in several important respects. No manual transformation of content is required in ViewDirect. Data in ViewDirect is stored in its original format and can be distributed and printed in that format. In addition, the content can be automatically transformed for presentation in web browser friendly formats using a Mobius product called DocumentDirect for the Internet as well as other utilities provided by Mobius to licensees. No outsourcing or services are required to transform ViewDirect content for presentation purposes.

22. Acartus also made the statement in the promotional piece that "continuing to support a legacy archival system such as Mobius perpetuates a series of unnecessary licensing, services and maintenance costs." This statement is false. Every software vendor has licensing and maintenance costs associated with its products; such costs cannot fairly characterized as "unnecessary." Moreover, Mobius' solutions can be deployed "out of the box" to capture and present content without requiring any special services.

Conclusion

23. For the reasons set forth here and in Mobius' accompanying memorandum of law, the Court should deny defendants' motion for summary judgment.

Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury that the foregoing is true and correct. Executed this 1st day of May, 2007.


Mitchell Gross